

## SENATE BILL NO. 65

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CIVIL LIABILITY LAWS; SETTING CONDITIONS ON CIVIL ACTIONS FOR EXPOSURE TO COVID-19; LIMITING LIABILITY OF PREMISES OWNERS; PROVIDING SAFE HARBOR FOR THOSE WHO COMPLY WITH CERTAIN TYPES OF REGULATIONS; LIMITING LIABILITY OF HEALTH CARE PROVIDERS; LIMITING PRODUCTS LIABILITY CLAIMS IN RESPONSE TO COVID-19; PROVIDING DEFINITIONS; AND AMENDING SECTION 27-1-719, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Definitions.** As used in [sections 1 through 6], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

(2) "Health care professional" means physicians and other health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid. This term includes persons engaged in telemedicine as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

(3) "Minimum medical condition" means an inpatient hospitalization or death where the primary cause of the inpatient hospitalization or death is covid-19.

(4) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

(5) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental,

1 cultural, charitable, or health care purpose.

2 (6) "Public health guidance" includes guidance related to covid-19 issued by the following:

3 (a) the centers for disease control and prevention of the U.S. department of health and human  
4 services;

5 (b) the centers for medicare and medicaid services of the U.S. department of health and human  
6 services;

7 (c) the federal occupational safety and health administration;

8 (d) the office of the governor;

9 (e) a state agency, including the department of public health and human services; or

10 (f) a local government including a local government health department or local government board of  
11 health.

12 (7) "Qualified product" means and includes:

13 (a) personal protective equipment and supplies used to treat covid-19 or to prevent the spread of  
14 covid-19;

15 (b) medical devices, equipment, and supplies used to treat covid-19, including medical devices,  
16 equipment, and supplies that are used or modified for an unapproved use to treat covid-19 or to prevent the  
17 spread of covid-19;

18 (c) medical devices, equipment, and supplies used outside of their normal use to treat covid-19 or to  
19 prevent the spread of covid-19;

20 (d) medications used to treat covid-19, including medications prescribed or dispensed for off-label use  
21 to attempt to treat covid-19;

22 (e) tests to diagnose or determine immunity to covid-19; and

23 (f) a component of an item described in subsections (7)(a) through (7)(e).  
24

25 **NEW SECTION. Section 2. Actual injury.** A person may not bring or maintain a civil action alleging  
26 exposure or potential exposure to covid-19 unless:

27 (1) the civil action relates to a minimum medical condition;

28 (2) the civil action involves an act that was intended to cause harm; or

(3) the civil action involves an act that constitutes gross negligence or willful and wanton misconduct.

**NEW SECTION. Section 3. Premises owner's duty of care -- limited liability.** A person who

possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises, shall not be liable for civil damages for injuries sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises, unless one or both of the following apply to the person who possesses or is in control of the premises:

(1) the person who possesses or is in control of the premises exposes the individual to covid-19 through an act of gross negligence or willful and wanton misconduct; or

(2) the person who possesses or is in control of the premises intentionally exposes the individual to covid-19.

**NEW SECTION. Section 4. Safe harbor for compliance with regulations, executive orders, or public health guidance.** A person shall not be held liable for civil damages for injuries sustained from an alleged exposure or potential exposure to covid-19 if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged exposure or potential exposure.

**NEW SECTION. Section 5. Liability of health care providers.** A health care provider shall not be liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the state's response to covid-19 unless the health care provider caused the death or injury of an individual through an act of gross negligence, willful and wanton misconduct, or an intentional tort. This subsection applies to:

(1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19;

(2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a

1 suspected or confirmed case of covid-19;

2 (3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19  
3 when those acts or omissions support the state's response to covid-19, including the following:

4 (a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the  
5 diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public  
6 health guidance;

7 (b) diagnosing or treating patients outside the normal scope of the health care provider's license or  
8 practice;

9 (c) using medical devices, equipment, or supplies outside of their normal use for the provision of  
10 health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

11 (d) conducting tests or providing treatment to an individual outside the premises of a health care  
12 facility;

13 (e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities,  
14 medical devices, equipment, supplies, or other resources attributable to covid-19 that renders the health care  
15 provider unable to provide the level or manner of care to a person that otherwise would have been required in  
16 the absence of covid-19; or

17 (f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal  
18 protective equipment.

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20 **NEW SECTION. Section 6. Supplies, equipment, and products designed, manufactured,**  
21 **labeled, sold, distributed, and donated in response to covid-19.** (1) A person who designs, manufactures,  
22 labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment,  
23 or a qualified product in response to covid-19 shall not be liable in a civil action alleging personal injury, death,  
24 or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or  
25 donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified  
26 product unless the person caused the personal injury, death, or property damage through an act of gross  
27 negligence, willful and wanton misconduct, or an intentional tort.

28 (2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting

1 or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 shall not be  
2 liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to  
3 provide proper instructions or sufficient warnings unless the person caused the personal injury, death, or  
4 property damage through an act of gross negligence, willful and wanton misconduct, or an intentional tort.

5 (3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part  
6 by covid-19 as defined in [section 1].  
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8 **Section 7.** Section 27-1-719, MCA, is amended to read:

9 **"27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer. (1)**

10 As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

11 (2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or  
12 consumer or to the property of a user or consumer is liable for physical harm caused by the product to the  
13 ultimate user or consumer or to the user's or consumer's property if:

14 (a) the seller is engaged in the business of selling the product; and

15 (b) the product is expected to and does reach the user or consumer without substantial change in the  
16 condition in which it is sold.

17 (3) The provisions of subsection (2) apply even if:

18 (a) the seller exercised all possible care in the preparation and sale of the product; and

19 (b) the user or consumer did not buy the product from or enter into any contractual relation with the  
20 seller.

21 (4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by  
22 covid-19 as defined in [section 1], which are governed by [section 3].

23 (b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

24 (5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a  
25 seller, based on strict liability in tort, for personal injury or property damage caused by a defectively  
26 manufactured or defectively designed product. A seller named as a defendant in an action based on strict  
27 liability in tort for damages to person or property caused by a defectively designed or defectively manufactured  
28 product may assert the following affirmative defenses against the user or consumer, the legal representative of

the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

**27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) (a) Subsection (2) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in [section 1], which are governed by [section 3].

(b) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming

1 damages by reason of injury to the user or consumer:

2 (a) The user or consumer of the product discovered the defect or the defect was open and obvious  
3 and the user or consumer unreasonably made use of the product and was injured by it.

4 (b) The product was unreasonably misused by the user or consumer and the misuse caused or  
5 contributed to the injury.

6 (6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied  
7 in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

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9 NEW SECTION. Section 8. Codification instruction. [Sections 1 through 6] are intended to be  
10 codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through 6].

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12 NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that matured,  
13 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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